

J. Y. Interpretation No.377 (March 31, 1995) *

ISSUE: Is the directive issued by the Ministry of Finance, which states to the effect that the income tax levied on any salary repaid in lump sum upon one's reinstatement should be based on the date of actual payment, constitutional?

RELEVANT LAWS:

Articles 14, 22, 76-1, Paragraph 1, 84 and 88 of the Income Tax Act (所得稅法第十四條、第二十二條、第七十六條之一第一項、第八十四條、第八十八條); Directive Ref. No. (60)-TSYFT-368 issued on June 2, 1971, by the Department of Taxation, Ministry of Finance (財政部賦稅署六十年六月二日(60)台稅一發字第三六八號箋函) .

KEYWORDS:

income year (所得歸屬年度), cash basis (收付實現制), accrual basis (權責發生制), legislative discretion (立法裁量), date of actual income (payment) (實際所得(給付)日期), realized income (已實現之所得), salary repaid upon reinstatement (復職補發薪金) . **

HOLDING: The income year for an individual should be determined based on the date of actual income, which is pre-

解釋文：個人所得之歸屬年度，依所得稅法第十四條及第八十八條規定並參照第七十六條之一第一項之意

* Translated by Vincent C. Kuan.

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scribed under Articles 14 and 88 of the Income Tax Act, in reference to the intent of Article 76-1, Paragraph 1, thereof. In other words, the imposition of annual consolidated income tax should be limited to realized income, regardless of whether the cause of income occurs in a particular year. The Directive Ref. No. (60)-TSYFT-368 issued on June 2, 1971, by the Department of Taxation, Ministry of Finance, explains to the effect that the consolidated income tax levied on the salary repaid in lump sum by the agency the taxpayer served for the period of the taxpayer's suspension from office for certain reason upon his reinstatement should be based on the date of actual payment and on the aggregate amount of the actual payment. The said directive is in line with the legislative intent of the aforesaid provision of the Income Tax Act and is, therefore, not unconstitutional.

REASONING: Two different methods have been adopted in determining the income year, namely, the cash basis and accrual basis. There are advantages and disadvantages of both methods.

旨，係以實際取得之日期為準，亦即年度綜合所得稅之課徵，僅以已實現之所得為限，而不問其所得原因是否發生於該年度。財政部賦稅署六十年六月二日臺稅一發字第三六八號箋函關於納稅義務人因案停職後，於復職時服務機關一次補發其停職期間之薪金，應以實際給付之日期為準，按實際給付之總額，課徵綜合所得稅之釋示，符合上開所得稅法之意旨，與憲法尚無牴觸。

解釋理由書：認定所得歸屬年度有收付實現制與權責發生制之分，無論何種制度均利弊互見，如何採擇，為立法裁量問題。歷次修正之所得稅法關於個人所得稅之課徵均未如營利事業所

It is a question of legislative discretion when it is a matter of deciding which method is to be adopted. The past amendments to the Income Tax Act have never adopted the accrual basis, as is used, in principle, for profit-seeking enterprise income tax (refer to Article 22 of the Income Tax Act, as amended and promulgated on December 30, 1989), for the imposition of income tax for an individual, but instead the date of actual payment to the individual is used as the basis, i.e., the cash basis. Such contrast is crystal clear after referring to the following provisions of the Income Tax Act: Article 14, Paragraph 1, thereof provides to the effect that the gross amount of consolidated income of an individual shall be the aggregate of various categories of income for the whole year; Article 88, Paragraph 1, thereof provides that, for a taxpayer having income of various categories, the tax withholder involved shall withhold tax payable at the time of payment as per the prescribed tax rates or withholding procedures, and pay the tax withheld in accordance with relevant provisions thereof; but Article 76-1, Paragraph 1, thereof

得採權責發生制為原則（見中華民國七十八年十二月三十日修正公布之所得稅法第二十二條），乃以個人所得實際取得之日期為準，即所謂收付實現制，此就同法第十四條第一項：個人綜合所得總額，以其全年各類所得合併計算之；第八十八條第一項：納稅義務人有各類所得者，應由扣繳義務人於給付時，依規定之扣繳率或扣繳辦法扣取稅款並繳納之，又第七十六條之一第一項對於公司未分配盈餘歸戶，按其歸戶年度稅率課徵所得稅，而不問其實際取得日期之例外規定，對照以觀，甚為明顯。是故個人綜合所得稅之課徵係以年度所得之實現與否為準，凡已收取現金或替代現金之報償均為核課對象，若因法律或事實上之原因而未能收取者，即屬所得尚未實現，則不列計在內。財政部賦稅署六十年六月二日臺稅一發字第三六八號箋函稱：「查所得之所屬年度，應以實際給付之日期為準，納稅義務人因案停職後，於復職時服務機關一次補發其停職期間之薪金，自應以實際給付之日期為準，按實際給付之總額，合併補發年度課徵綜合所得稅」，符合上述意旨，與憲法尚無牴觸。至於公務員因法定原因停職，於停職間，又未支領待遇或生活津貼者，復職時一次補發停職期間之

provides that the income tax levied on the undistributed earnings of a company shall be calculated based on the tax rate applicable in the taxable year, regardless of the date of actual payment. Therefore, the levy of the consolidated income tax for an individual depends on whether the income of a particular year is realized. Whoever receives cash or cash equivalent as payment will be subject to taxation. If such cash or its equivalent is not received for any reason in law or in fact, it will be regarded as income not realized and, as such, will not be counted toward one's income. The Directive Ref. No. (60)-TSYFT-368 issued on June 2, 1971, by the Department of Taxation, Ministry of Finance, states, "The income year should be determined based on the date of actual payment. The consolidated income tax levied on the salary repaid in lump sum by the agency the taxpayer served for the period of the taxpayer's suspension from office for certain reason upon his reinstatement should be based on the date of actual payment and on the aggregate amount of the actual payment." The said directive is in line with the legislative in-

俸給，與納稅義務人得依己意變動其所得給付時間之情形不同，此種所得係由長期累積形成，宜否於取得年度一次按全額課稅，應於所稅法修正時予以檢討，併予指明。

tent of the aforesaid provision of the Income Tax Act and is, therefore, not unconstitutional. In respect of the situation where a public functionary is suspended from his office for statutory cause and does not receive any remuneration or living allowance during the period of such suspension, the remuneration repaid in lump sum for the period of such public functionary's suspension upon his reinstatement should be distinguished from the circumstances under which a taxpayer may change of his own free will when his income is paid. Income of the kind is accumulated over a long period of time, and, as is hereby pointed out, whether tax should be levied on the aggregate amount thereof for the income year should be an issue to be addressed later when the Income Tax Act is amended.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。